

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF ST. PAUL

In the Matter of the Taxicab Driver's  
License Held by Stephen M. Schnichels,  
License No. 10808.

FINDINGS OF FACT,  
CONCLUSIONS,  
RECOMMENDATION,  
AND MEMORANDUM.

\_\_\_\_\_The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on September 27, 1995, in St. Paul. The hearing took less than one day, and the record closed at the end of the hearing.

Stephen M. Schnichels, Rt. 1, Box 266E, Pillager, MN 56473, appeared pro se.

John T. Penland, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., St. Paul, MN 55102, appeared on behalf of the City of St. Paul.

This Report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record. The Council may accept, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to § 310.05(c-1) of the St. Paul Legislative Code, the Council shall provide the licensee an opportunity to present oral or written argument alleging error in this Report, and to present argument relating to any action recommended in this Report. The licensee should contact John T. Penland to ascertain the procedure for presenting argument.

STATEMENT OF ISSUE

Should any adverse action be taken against the licensee based on an incident occurring August 2, 1995?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

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FINDINGS OF FACT

Background Facts

1. Stephen M. Schnichels has been a taxicab driver in the City of St. Paul since 1987. His license is presently active, and records maintained by the City reflect that Schnichels had no licensing problems through August 1, 1995.

2. By letter dated August 9, 1995, the City notified Schnichels of possible adverse action against his taxicab driver's license based on an incident that occurred on August 2, 1995. The City alleged the following conduct as the basis for adverse action:

On or about August 2, 1995, at about 4:00 a.m., you were driving a City Wide cab in the vicinity of Arundel and Minnehaha in Saint Paul, and were engaged in prostitution for money. You were also in possession of marijuana, and possessed a handgun in the vehicle in violation of city ordinance.

City's Exh. 8.

3. On September 6, 1995, the City served a Notice of Hearing on Schnichels, based on the incident alleged above.

#### The August 2, 1995 Incident

4. Schnichels was on duty driving a City Wide cab at approximately 4:00 a.m. on August 2, 1995.

5. Two St. Paul patrol officers, Norman Cherrey and Suzanne Drutschmann, observed Schnichels' cab pulling out of a dead-end street at the intersection of Arundel and Minnehaha in St. Paul.

6. The officers stopped the cab, not because of any unsafe or illegal driving conduct, but because that particular dead-end street is known to them as an area frequented by prostitutes and "johns." Officer Cherrey testified that his practice is to stop every car coming out of that dead-end street at night because in his opinion there is no legitimate reason to be there. No businesses located in that area are open at night.

7. Officer Cherrey asked Schnichels to step out of the cab and come back to the squad car; Schnichels complied with the officer's request. Officer Cherrey observed Schnichels to be sober and clear-headed. Schnichels cooperated fully with the police officers throughout the course of this incident.

8. Officer Cherrey then frisked Schnichels and felt a hard object in the left front pocket of Schnichels' jeans. He removed the object and found it to be a pipe containing a small amount of marijuana resin. The pipe was cold and did not appear to have been used recently. Based on his discovery of the pipe, Officer Cherrey placed

Schnichels under arrest for possession of drug paraphernalia in violation of Minn. Stat. § 152.092, a petty misdemeanor, and placed him in the back of the squad car.

9. After discovery of the pipe, Officer Drutschmann asked the passenger to step out of the cab. The passenger was identified by her driver's license as Dawn Marie Gilbert of 841 Burr St., #6, St. Paul. Gilbert allegedly told Officer Drutschmann that Schnichels had picked her up at the intersection of Arundel and Minnehaha and had pulled into the dead-end to make a u-turn.

10. While Officer Drutschmann was questioning Gilbert, Officer Cherrey proceeded to search the cab. He opened a closed briefcase on the front passenger seat and discovered inside a semi-automatic handgun. The gun was loaded with one clip of ammunition, and another full clip was next to it in the briefcase.

11. Schnichels did not possess a permit to purchase or carry a firearm. City's Exh. 7.

12. After discovery of the gun, Gilbert allegedly stated to Officer Drutschmann that she had nothing to do with the gun or the pipe. She further allegedly stated that Schnichels had picked her up at University and Western Avenue, brought her to the dead-end, and paid her \$20 for oral sex. Gilbert then took a \$20 bill out of her right sock and gave it to Officer Drutschmann.

13. Gilbert was placed under arrest and charged with engaging in prostitution in violation of Minn. Stat. § 609.324, subd. 2.

14. Gilbert did not appear to testify at the hearing in this matter. The City attempted to have her served with a subpoena at 841 Burr St., #1, St. Paul. The subpoena was returned with an affidavit from Metro Legal Services stating that the process server was unable to locate her there. City's Exh. 10.

15. Schnichels was charged with carrying a weapon in a motor vehicle without a permit in violation of Minn. Stat. § 624.714, subd. 1, a gross misdemeanor; and engaging in prostitution in violation of Minn. Stat. § 609.324, subd. 2, a misdemeanor. At the time of the hearing, he had not been tried on the criminal charges. Schnichels was never cited for the petty misdemeanor/possession of drug paraphernalia offense for which he was originally arrested.

16. Schnichels denies engaging in prostitution. He testified that Gilbert solicited him, and when he refused, she asked him to take her to a motel at 901 Snelling Avenue.

17. Schnichels denies that the marijuana pipe was his. He testified that he found the pipe in the back of his cab during that shift and that he planned to turn it in when his shift ended.

18. Schnichels admits to having the loaded gun in the briefcase inside his cab.

19. Schnichels' brother-in-law, Gary Wickham, was shot in the head while driving a cab on November 27, 1994. Wickham nearly died of his injuries. Another friend of Schnichels' was shot and killed six weeks later while driving a cab. Schnichels himself has been stabbed while driving cab.

20. Schnichels purchased the gun some time after the shootings of his brother-in-law and friend for the purpose of protecting himself while working.

21. Schnichels has not driven a taxicab for City Wide or any other cab company since his arrest on August 2, 1995. Based on information given to him by a manager at City Wide Cab, he believed incorrectly that his license had already been suspended. The lack of income since that time has caused significant hardship for his family.

#### Recommended Adverse Action

22. The Department of License, Inspections, and Environmental Protection recommends that Schnichels' license to drive a taxicab be revoked.

23. The City maintains that there is just cause pursuant to § 376.16(j) of the St. Paul Legislative Code to revoke Schnichels' license, based on his possession of drug paraphernalia in violation of Minn. Stat. § 152.092.

24. The City also maintains that there is just cause to revoke Schnichels' license for engaging in prostitution in violation of Minn. Stat. § 609.324, subd. 2, and § 376.11(o) of the St. Paul Legislative Code (using the taxicab for purposes of prostitution).

25. The City further maintains that there is just cause to revoke Schnichels' license for failing to operate the cab in a safe and legal manner in violation of § 376.11(t) of the St. Paul Legislative Code and for engaging in a pattern of illegal conduct from which an inference of lack of fitness or good character may be drawn. Id. § 310.06(b)(6)(c).

26. The City finally maintains that there is just cause to revoke Schnichels' license for possession of a handgun in a motor vehicle without a permit, in violation of Minn. Stat. § 624.714, subd. 1.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The St. Paul City Council has jurisdiction of the subject matter of this hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. The City has failed to prove by a preponderance of the evidence that the licensee knowingly or intentionally possessed drug paraphernalia in violation of Minn. Stat. § 152.092.

4. The City has failed to prove by a preponderance of the evidence that the licensee engaged in prostitution in violation of Minn. Stat. § 609.324, subd. 2, or used his vehicle for the purposes of prostitution in violation of § 376.11(o) of the St. Paul Legislative Code.

5. The City has failed to prove by a preponderance of the evidence that the licensee operated his vehicle in an unsafe or illegal manner in violation of § 376.11(t) of the St. Paul Legislative Code.

6. The City has failed to prove by a preponderance of the evidence that the licensee has engaged in a pattern or practice of illegal conduct from which an inference of lack of fitness or good character may be drawn in violation of § 310.06(b)(6)(c).

7. The City has proved by a preponderance of the evidence that the licensee possessed a handgun in a motor vehicle without having first obtained a permit to carry the handgun in violation of Minn. Stat. § 624.714, subd. 1.

8. Based on the violation of Minn. Stat. § 624.714, subd. 1, there is just cause within the meaning of § 376.16(j) of the St. Paul Legislative Code to revoke the licensee's taxicab driver's license, and the St. Paul City Council is authorized to take adverse action pursuant to § 310.06(b)(6)(a).

9. In deciding what adverse action to take, the City Council should consider as mitigating circumstances under § 310.05(c) of the St. Paul Legislative Code: (1) the recent and near-fatal shooting of Schnichels' brother-in-law, followed closely by the fatal shooting of another friend, both of which occurred while the victims were driving taxicabs; and (2) the fact that Schnichels purchased the gun only after these shootings occurred and after he himself had been stabbed while driving his cab.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

1. That there is just cause to revoke Schnichels' taxicab driver's license based on his possession of a handgun in his cab without a permit, in violation of Minn. Stat. § 624.714, subd. 1;

2. That in deciding what adverse action to take against Schnichels' license, the City Council should consider the mitigating circumstances identified above.

Dated this \_\_\_\_ day of October, 1995

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KATHLEEN D. SHEEHY  
Administrative Law Judge

#### NOTICE

The City is respectfully requested to provide a copy of its final decision to the Administrative Law Judge by first class mail.

Reported: Tape Recorded.

#### MEMORANDUM

The City has alleged a number of bases for the proposed adverse action against Schnichels' license, only one of which has been sustained by the Administrative Law Judge.

With regard to the allegation that he illegally possessed drug paraphernalia, the City has no evidence that Schnichels possessed the pipe with the intention of using or possessing it as drug paraphernalia. Schnichels maintains he found the pipe in his cab that evening, and the City has no evidence to the contrary. The pipe was cold and did not appear to have been recently used; and Officer Cherrey himself testified that Schnichels appeared to be sober and clear-headed.

With regard to the charge that he engaged in prostitution, the only evidence offered by the City are the hearsay statements of Dawn Gilbert, as testified to by Officer Drutschmann. These statements are not the type of evidence upon which reasonable, prudent persons would rely in the conduct of their serious affairs, see Minn. R. 1400.7300, subp. 1, and they should be given no weight in these proceedings. According to the police, Gilbert found herself potentially linked to a serious gun offense, which might well provide a reason to lie about why she was there. Although Officer Drutschmann offered the opinion that Gilbert's second version of the events was the truthful one, that credibility determination should only be made by weighing Gilbert's

testimony against that of Schnichels. Without Gilbert's testimony, no such determination can be made.

With regard to the allegation that Schnichels operated the cab in an unsafe manner in violation of § 376.11(t) of the St. Paul Legislative Code, there is no evidence whatsoever that he operated the cab either unsafely or illegally. Neither police officer observed any driving violations; the decision to stop Schnichels' cab was based solely on their observation that he was leaving an area known to them as one frequented by prostitutes and "johns."

Finally, the Administrative Law Judge rejects the City's contention that Schnichels' license should be revoked because he has engaged in a "pattern or practice" of illegal conduct from which an inference of lack of fitness or good character may be drawn, pursuant to § 310.06(b)(6)(c). There is no evidence of any pattern of illegal conduct; this was one incident in the course of eight years of cab driving, with no previous licensing violations.

Schnichels has raised a number of constitutional suppression issues that may be relevant in the criminal proceedings against him, including the validity of the stop, the need to frisk him, and the scope of the search of the cab. In addition, it is unclear why Officer Cherrey initially placed him under arrest, when a person charged with a petty misdemeanor ordinarily is not detained. See Minn. R. Crim. P. 6.01, subd. 1(1)(a) ([o]rdinarily, for misdemeanors not punishable by incarceration, a citation shall be issued). In these proceedings, however, Schnichels affirmatively admitted to possessing the handgun without a permit and explained, in a fairly compelling manner, the reasons that may mitigate his violation of the law.

K.D.S.